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**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking on the  
Commission's Own Motion to Establish  
Consumer Rights and Consumer Protection Rules  
Applicable to All Telecommunications Utilities.

Rulemaking 00-02-004  
(Filed February 3, 2000)

**ASSIGNED COMMISSIONER'S RULING REQUESTING COMMENT AND  
BRIEFING ON CRAMMING REPORTING REQUIREMENTS**

**1. Introduction**

I am issuing this Assigned Commissioner's Ruling (ACR) to discuss and seek comment on cramming reporting requirements. The purpose of this ACR is to develop a record upon which the California Public Utilities Commission ("Commission") may issue a final decision adopting cramming reporting requirements. We intend for all interested parties to file and serve comments on the issues raised in this Ruling. Opening Comments are due on April 7, 2008, should be restricted to 35 pages and should address only the issues raised below in Section 3 regarding cramming reporting requirements. Reply Comments are due on April 28, 2008, and are limited to 25 pages.

## **2. Background on Cramming Reporting Requirements**

### **2.1. 2000 Cramming Reporting Requirements**

In 1997, the Commission opened a rulemaking<sup>1</sup> to consider, among other things, rules designed to deter cramming, which is the placement of an unauthorized, misleading, or deceptive charge on a subscriber's<sup>2</sup> phone bill.<sup>3</sup> In D.00-03-020,<sup>4</sup> the Commission adopted reporting requirements for all cramming complaints.<sup>5</sup> Shortly thereafter, the Commission revised the cramming reporting requirement rules, among other things, in D.00-11-015. Local exchange carriers (LECs) and billing agents currently report cramming complaints pursuant to D.00-13-020 and D.00-11-015. The Commission has not required wireless carriers to comply with the cramming reporting requirements because, at the time of the 1997-2000 proceeding, wireless carriers were just beginning to enter the marketplace, and they were not active participants in the proceeding.<sup>6</sup>

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<sup>1</sup> The full purpose of the rulemaking was "to determine if the Commission could better protect consumers against the unauthorized changing of their telephone provider while still making it easy for customer to exercise their choice so as to enhance vigorous competition." (D.00-03-020, p. 2.)

<sup>2</sup> "Subscriber" is defined as "[a] person or entity that subscribes to a telecommunications network or service subject to Commission jurisdiction." (D.06-03-01, p. A-20, GO 168, Part 4(B).)

<sup>3</sup> See FCC Website, [www.fcc.gov/cgb/consumerfacts/cramming.html](http://www.fcc.gov/cgb/consumerfacts/cramming.html).

<sup>4</sup> Attachment A to D.00-03-020 set forth Anti-Cramming Best Practices Guidelines; Attachment B set forth Subscriber Complaint Reporting Rules; and Attachment C set forth a Consumer Education Plan.

<sup>5</sup> The reporting requirements adopted in D.00-03-020, as revised in D.00-11-015, are attached to this ACR in Appendix A.

<sup>6</sup> The Commission established rules in D.00-03-020 and D.00-11-015 that apply to any "billing telephone company." The definition of "billing telephone company" would encompass

*Footnote continued on next page*

## **2.2. The Consumer Protection Initiative (CPI) Decision**

In March 1998, the Commission initiated an evaluation of its role and responsibilities regarding consumer protection in the utility and transportation industries. In July 1998, the Commission's task force released its staff Report on the California Public Utilities Commission's Consumer Protection Role and Responsibilities. As a foundation for the next step, staff issued a follow-up report in February 2000,<sup>7</sup> in which it recommended the Commission establish a list of telecommunications rights and related rules that would apply in a technology-neutral manner to all telephone companies. The Commission cited the 2000 Staff Report in opening R.00-02-004, Order Instituting Rulemaking on the Commission's Own Motion to establish Consumer Rights and Protection Rules Applicable to All Telecommunications Utilities.

Six years later, the Commission issued a final decision in R.00-02-004, D.06-03-013 (CPI decision), which adopted revised General Order (GO) No. 168, Market Rules to Empower Consumers and to Prevent Fraud. The purpose of the revised General Order was to chart a new regulatory role for the Commission in the face of swift technological advances; the convergence of voice, data, and video; and increasing competition in the telecommunications marketplace. The Commission also adopted a cramming rule in the CPI decision, which

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wireless carriers. However, the decisions were served only on local exchange carriers and interexchange carriers, and not the wireless carriers.

<sup>7</sup> Consumer Protections for a Competitive Telecommunications Industry: Telecommunications Division Staff Report and Recommendations (Feb. 3, 2000) ("2000 Staff Report").

established that: (1) telephone companies<sup>8</sup> may only bill subscribers for authorized charges; (2) the burden is on telephone companies to establish authorization of a disputed charge; and (3) prior to establishing this authorization, the carrier must treat a charge as if it was unauthorized and may not require the subscriber to make any payment of the disputed charge.<sup>9</sup> The Commission also emphasized that carriers are responsible for the charges placed on their bills and for policing their bills.<sup>10</sup> The Commission's purpose in enacting this cramming rule was to clarify current law and to emphasize that it is the billing telephone company's responsibility to resolve cramming complaints.

The Commission supported the CPI decision because it balanced the carriers' need to operate in the marketplace with subscribers' need to be protected from unscrupulous actors. Because existing law contains extensive protections for consumers, the CPI decision found that the adoption of new rules, with a few exceptions, was not necessary. Rather, the CPI decision emphasized that the key to protecting consumers against unscrupulous practices by carriers is enforcement. By better enforcing existing law, the Commission could better protect consumers than by adopting a series of new rules. To this end, the

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<sup>8</sup> The CPI decision defines a telephone company as "any telephone corporation (as defined in Pub. Util. Code § 234) operating within California. This term includes resellers and wireless telephone service providers." (D.06-03-013, Appendix A, p. A-20; GO 168, Part 4(B). Section 234(a) states: "'Telephone Corporation' includes every corporation or person owning, controlling, operating, or managing any telephone line for compensation within this state." (Pub. Util. Code § 234.)

<sup>9</sup> The Cramming Rule adopted in the CPI decision, GO 168, Part 4, is attached to the Ruling in Appendix B.

Commission created a Telecommunications Fraud Unit in its Enforcement Division, and has built stronger working relationships among the Commission and various law enforcement agencies. The Commission also increased its Consumer Affairs Bureau staff, who take consumer complaints from the Commission's complaint hotline, and has undertaken programs to train community based organizations to facilitate complaint filing, particularly to assist limited English speaking communities, seniors, low income and disadvantaged communities.

In the CPI decision, the Commission directed staff to hold a workshop to discuss how all carriers, including wireless carriers and others not reached under the prior regulatory regime, shall meet the statutory requirement of Section 2889.9, which states, in relevant part:

(d) The commission shall establish rules that require each billing telephone company, billing agent, and company that provides products or services that are charged on subscribers' telephone bills, to provide the commission with reports of complaints made by subscribers regarding the billing for products or services that are charged on their telephone bills as a result of the billing and collection services that the billing telephone company provides to third parties, including affiliates of the billing telephone company.<sup>11</sup>

In compliance with Section 2889.9, the CPI decision also required staff to propose cramming-related reporting requirements applicable to all

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<sup>10</sup> D.06-03-013, p. 92-95.

<sup>11</sup> Pub. Util. Code, § 2889.9(d).

telecommunications companies, including for the first time, wireless carriers.<sup>12</sup> On July 17, 2006 and August 21, 2006, the Commission's Consumer Protection and Safety Division (CPSD) conducted workshops on Cramming Reporting Requirements in compliance with the CPI decision. Staff issued a Draft Staff Report on August 11, 2006, and a Final Staff Report ("Staff Report")<sup>13</sup> on cramming reporting requirements on October 13, 2006.

This ACR on cramming reporting requirements stems directly from the Commission's intent in the CPI decision to step up its efforts in the enforcement area. Data provided to Commission staff from carriers pursuant to a reporting requirement is an essential tool in the Commission's enforcement efforts. Pursuant to the directive in the CPI decision, the Commission intends to adopt new cramming reporting requirements that would be applicable to all telephone companies, and repeal the cramming reporting requirements adopted in D.00-03-020 and D.00-11-015 which imposed complaint reporting requirements on local exchange carriers and not on other regulated voice providers such as wireless carriers. This ACR seeks to solicit comment and further information regarding new cramming reporting requirements.

### **2.3. Statutory Authority of Cramming Reporting Requirements**

The Commission's cramming reporting requirement adopted in the CPI decision is based on existing law. The cramming statutes, Public Utilities Code Sections 2889.9 and 2890 ("Section 2889.9" and "Section 2890"), set forth

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<sup>12</sup> D.06-03-013, pp. 77-78, 93-94, 159, Ordering Paragraph 7.

<sup>13</sup> The Staff Report is attached to this ACR in Appendix C.

reporting requirements concerning complaints for unauthorized charges.<sup>14</sup>

Under Section 2889.9, the Commission is required to adopt reporting requirements for each billing telephone company, billing agent, and company that provides products or services that are charged on subscribers' telephone bills. This statute also provides that if the Commission receives more than 100 complaints for unauthorized charges in a 90-day period, CPSD shall commence

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<sup>14</sup> The relevant sections of the statutes concerning reporting requirements are as follows: “(d) The commission shall establish rules that require each billing telephone company, billing agent, and company that provides products or services that are charged on subscribers' telephone bills, to provide the commission with reports of complaints made by subscribers regarding the billing for products or services that are charged on their telephone bills as a result of the billing and collection services that the billing telephone company provides to third parties, including affiliates of the billing telephone company. (e) If the commission receives more than 100 complaints regarding unauthorized telephone charges in any 90-day period as to a person, corporation, or billing agent's activities that are subject to Section 2890 and this section, the commission's consumer services division shall commence a formal or informal investigation. The commission, to further the purposes of Section 2890 and this section, may change the number of complaints in any 90-day period that initiates the commencement of an investigation. This subdivision does not prohibit the commission's consumer services division from opening any investigation it deems necessary to enforce Section 2890 or this section. . . . (i) The commission may adopt rules, regulations and issue decisions and orders, as necessary, to safeguard the rights of consumers and to enforce the provisions of this article.”<sup>14</sup> (Pub. Util. Code § 2889.9 (emphasis added).) Pub. Util. Code § 2890 provides, in relevant part: “(D) Provide a means for expeditiously resolving subscriber disputes over charges for a product or service, the purchase of which was not authorized by the subscriber. In the case of a dispute, there is a rebuttable presumption that an unverified charge for a product or service was not authorized by the subscriber and that the subscriber is not responsible for that charge. With regard to direct dialed services, evidence that a call was dialed is prima facie evidence of authorization. If recurring charges arise from the use of those subscriber-initiated services, the recurring charges are subject to this section. (e) If an entity responsible for generating a charge on a telephone bill receives a complaint from a subscriber that the subscriber did not authorize the purchase of the product or service associated with that charge, the entity, not later than 30 days from the date on which the complaint is received, shall verify the subscriber's authorization of that charge or undertake to resolve the billing dispute to the subscriber's satisfaction.” (Pub. Util. Code, § 2890 (emphasis added).)

an investigation, and states that the Commission may change the threshold number of cramming complaints in a 90-day period that would initiate an investigation. Section 2890 requires carriers to resolve, or undertake to resolve, any complaint regarding unauthorized charges within 30 days from the date the complaint is received. These statutes are important because they demonstrate the Commission's obligation to adopt reporting requirements that protect subscribers. They also empower the Commission to do anything necessary to safeguard the rights of subscribers pursuant to these statutes.<sup>15</sup>

The Section 2889.9 cramming reporting requirements focus on third-party charges placed on subscriber's telephone bills because the Commission already had authority to regulate telephone companies, including requiring carriers to self-report complaints concerning unauthorized charges. This is expressed both in the text and legislative history of Section 2889.9,<sup>16</sup> and also in other statutes.<sup>17</sup> Most notably, Pub. Util. Code § 584 states:

Every public utility shall furnish such reports to the commission at such time and in such form as the commission may require in which the utility shall specifically answer all questions propounded by the commission. The commission may require any public utility to file monthly reports of earnings and expenses, and to file periodical or special reports, or both, concerning any matter about which the

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<sup>15</sup> See Pub. Util. Code, § 2889.9(i).

<sup>16</sup> See Pub. Util. Code, § 2889.9 (i) which provides, "[t]he commission may adopt rules, regulations and issue decisions and orders, as necessary, to safeguard the rights of consumers and to enforce the provisions of this article." See also Legislative History of AB 2142 (Brown) 1997-1998.

<sup>17</sup> See Pub. Util. Code, §§ 581-587.



commission is authorized by any law to inquire or to keep itself informed, or which it is required to enforce. All reports shall be under oath when required by the commission.

(Pub. Util. Code § 584 (emphasis added).) Thus, it is clear that the Commission may order all carriers, billing aggregators, and third-party vendors to comply with a cramming reporting requirement.

### **3. Recommendations and Requests for Further Comment**

The Staff Report made numerous proposals for cramming reporting requirements. We appreciate the staff's and parties' participation in the workshops. Some of the issues raised in the Staff Report would benefit from further comment prior to the adoption of a final decision.

#### **3.1. Definitions of Key Terms**

##### **3.1.1. Cramming**

The FCC defines cramming as “the practice of placing unauthorized, misleading, or deceptive charges on a subscriber’s telephone bill. Crammers rely on confusing telephone bills in an attempt to trick subscribers into paying for services they did not authorize or receive, or that cost more than the subscriber was led to believe.”<sup>18</sup> The FCC states that cramming occurs in the following ways:

In addition to providing local telephone service, local telephone companies often bill their customers for long distance and other services that other companies provide. If a local telephone company, long distance telephone company, or another type of service provider either accidentally or intentionally places

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<sup>18</sup> FCC Website, [www.fcc.gov/cgb/consumerfacts/cramming.html](http://www.fcc.gov/cgb/consumerfacts/cramming.html).

unauthorized, misleading, or deceptive charges on your bill, you may have been “crammed.”<sup>19</sup>

The Staff Report supports the FCC’s definition of cramming because it provides consumer protection from unauthorized charges<sup>20</sup> as well as misleading or deceptive charges.<sup>21</sup> We propose adopting the FCC’s definition of cramming and seek comment on this proposed definition. We note that, consistent with the FCC’s interpretation of cramming, the practice of cramming does not need to be intentional in order for it to be reportable.<sup>22</sup>

### **3.1.2. Complaint**

In the CPI decision, we adopted the FCC’s definition of complaint in a new cramming rule in GO 168, which provides: “[a]ny written or oral communication from a person or entity that has been billed for a charge that the person or entity alleges was unauthorized and that was billed either directly or indirectly, through a telephone company.”<sup>23</sup> The Staff Report supports this definition of complaint for the purposes of a cramming reporting requirement.<sup>24</sup> This

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<sup>19</sup> FCC Website, [www.fcc.gov/cgb/consumerfacts/cramming.html](http://www.fcc.gov/cgb/consumerfacts/cramming.html).

<sup>20</sup> The Staff Report states that “unauthorized charges” include the unauthorized addition of services or features to a consumer’s telephone service that a consumer never ordered, authorized or received. (See Staff Report, pp. 6-7.) The Staff Report also states that unauthorized charges include misleading or deceptive charges. Consistent with the Staff Report, we use the following definition for unauthorized charges: charges for a service that a subscriber never ordered, authorized or received; charges for a service or product where the subscriber was misled about the true cost; and situations involving false or deceptive charges.

<sup>21</sup> See Staff Report, p. 6.

<sup>22</sup> FCC Website, [www.fcc.gov/cgb/consumerfacts/cramming.html](http://www.fcc.gov/cgb/consumerfacts/cramming.html).

<sup>23</sup> Governing Cramming Complaints, D.06-03-013, p. A-19, Revised GO 168, Part 4(B).

<sup>24</sup> See Staff Report, p. 12.

definition of complaint is different from the definition used in the current cramming reporting requirement rules.<sup>25</sup> We believe that the FCC's definition is clear and unambiguous. We propose adopting the FCC's and CPI's definition of complaint, and seek comment on this issue.<sup>26</sup>

### **3.1.3. Resolved Complaint**

The definition of a resolved complaint was not discussed in detail in the Staff Report.<sup>27</sup> In the CPI decision, we provided the following definition of complaint resolution: "[i]f a telephone company receives a complaint that the user did not authorize the purchase of the product or service associated with a charge, the telephone company, not later than 30 days from the date on which the complaint is received, shall either (i) verify and advise the subscriber of the user's authorization of the disputed charge or (ii) undertake to credit the disputed charge and any associated late charges or penalties to the subscriber's

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<sup>25</sup> Under the current rules adopted in D.00-11-015, a customer complaint is defined as: "Any written or oral communication to a Billing Telephone Company or Billing Agent from a person or entity which has been billed for a charge which the person or entity alleges was unauthorized or resulted from false, deceptive, or misleading representations and which was billed, either directly or indirectly, through a billing telephone company." (D.00-11-015, Attachment A, p. 1.)

<sup>26</sup> The Staff Report also discussed how to distinguish between a complaint and an inquiry. Both a complaint and an inquiry can be initiated by the oral or written expression of a grievance by a consumer. We view consumer contact regarding general questions about a charge on their bills as an "inquiry." Although carriers and billing agents should track, record and resolve a consumer contact expressing general dissatisfaction with a bill, we do not believe these inquiries should be reportable for cramming reporting purposes. An inquiry can evolve to a complaint and would become reportable if and when the consumer expresses his or her objection to a specific charge or denies a charge or otherwise request the removal or reduction of an unauthorized charge. (See Staff Report, p. 12.)

<sup>27</sup> See Staff Report, p. 11.

bill."<sup>28</sup> We tentatively propose using the CPI decision of complaint resolution to define a resolved complaint. We recognize that the terms “complaint resolution” and “resolved complaint” are not necessarily interchangeable, and therefore, we seek comment on this proposal.

#### **3.1.4. Authorization**

The Staff Report recommends using the definition of authorization contained in Section 2890 (d)(2)(D) for cramming reporting purposes:<sup>29</sup> “[i]n the case of a dispute, there is a rebuttable presumption that an unverified charge for a product or service was not authorized by the subscriber and that the subscriber is not responsible for that charge.”<sup>30</sup> Consistent with Section 2889.9, we propose adopting this definition of authorization for purposes of a cramming reporting requirement, and seek comment on this issue.

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<sup>28</sup> D.06-03-013, GO 168, Part 4(C)(d), p. A-20.

<sup>29</sup> See Staff Report, p. 11.

<sup>30</sup> Pub. Util. Code § 2890(d)(2)(D). Our interpretation of this statutory definition of authorization takes into consideration the Attorney General’s (AG) settlement with AT&T Mobility. Pursuant to the terms of the stipulated judgment filed on October 10, 2007, AT&T must inform each of their subscribers of their legal rights regarding lost or stolen phones. AT&T must also either credit the disputed charges or inform subscribers of their legal rights which include: (1) the right to have the case investigated within 30 days; (2) the right to provide information showing a subscriber did not authorize the calls; (3) the right not to pay disputed charges during the investigation; and (4) the right to appeal the outcome of an investigation to the California Public Utilities Commission. The agreement also states that AT&T must notify subscribers in writing of these new requirements and assist subscribers to obtain credit for amounts already paid on lost or stolen phones dating back to 2003. AT&T will also pay the Attorney General's Office \$500,000 for costs of the investigation and for the Unfair Competition Law Fund, administered by the California District Attorneys Association. (*See People of the State of California v. AT&T Mobility LLC*, Final Judgment and Permanent Injunction, filed October 10, 2007.) It is our understanding that the AG is currently negotiating similar settlements with other wireless carriers.

### **3.2. Applicability of a Cramming Reporting Requirement**

The Staff Report proposes that billing telephone companies (both wireline and wireless carriers and resellers) and their billing agents, including third-party vendors, be required to report cramming data to the Commission.<sup>31</sup> We support this proposal. Both the Legislature and this Commission have made it clear that billing telephone companies,<sup>32</sup> service providers,<sup>33</sup> billing agents<sup>34</sup> and any third parties involved in the billing "food chain" share in the responsibility that subscribers' phone bills include only authorized charges. For example, we noted in the CPI decision that "[t]he Legislature stipulated that Pub. Util. Code § 2889.9 and § 2890 apply not only to utilities, but also to non-utility billing agents and other persons or corporations responsible for generating a charge on a subscriber's phone bill. Thus, the Commission may impose penalties on persons or corporations that violate the cramming statutes, even if the violators typically are not subject to our jurisdiction."<sup>35</sup>

We propose that billing telephone companies (both wireline and wireless carriers) and their billing agents, including third-party vendors, be required to

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<sup>31</sup> See Staff Report, pp. 16-17.

<sup>32</sup> In the CPI decision, we defined a telephone company as "any telephone corporation (as defined in Pub. Util. Code § 234) operating within California. This term includes resellers and wireless telephone service providers." (D.06-03-013, GO 168, Part 4(B), p. A-20.)

<sup>33</sup> In D.00-11-015, we defined Service Provider as "[t]he person or entity that originates the charge or charges that are billed to the subscriber." (D.00-11-015, Attachment A, p. 1.)

<sup>34</sup> In D.00-11-015, we defined Billing Agents as "[a]ny entity which provides billing service for service providers directly or indirectly through a billing telephone company." (D.00-11-015, Attachment A, p. 1.)

<sup>35</sup> D.06-03-013, p. 76.

provide the Commission with cramming complaint reports. We seek comment on this proposal.

### **3.3. Frequency of Reporting**

The Staff Report recommends that all carriers submit monthly reports to the Commission. The Staff Report recommends monthly reporting because it will allow the Commission to act early quickly against those entities that are engaged in cramming activities.<sup>36</sup> We support the rationale for recommending monthly reporting. We believe that monthly reporting will address staff's need to proactively evaluate complaint trends, respond quickly and target enforcement actions at the most egregious violators. We propose that the Calendar Month Summary Report be submitted to the Director of the Commission's Consumer Protection and Safety Division pursuant to the following schedule: a report for each month is due on the last day of the following month. For example, a report for the month of January, 2009 would be due on the last day of February, 2009. We seek comment on this proposal.

### **3.4. Which Complaints Should Be Reportable?**

The Staff Report recommends that the reporting of complaints should be confined to those not resolved after 30 days.<sup>37</sup> The reasoning behind this 30-day benchmark is that a rule requiring reporting of all complaints, as is currently the case for local exchange carriers, would be an administrative burden on all carriers (which would now include the wireless carriers). In comments on the Draft Staff Report, for example, the Joint Wireless Carriers indicated that many

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<sup>36</sup> See Staff Report, pp. 18-19.

<sup>37</sup> See Staff Report, p. 19.

carriers do not have systems in place to report this type of data, and that the process for reporting complaints over 30 days would be manual.<sup>38</sup> Another reason for this proposal was to provide carriers with sufficient time and an incentive to resolve customer complaints quickly, particularly in light of the fact that the Commission's CPI decision established that carriers may only bill subscribers for authorized charges, and bear the burden to establish authorization of the charge.<sup>39</sup> Some carriers filed comments on the Draft Staff Report in support of this 30-day benchmark, arguing that from an administrative and efficiency perspective, there are reasons to confine reporting to 30 days.<sup>40</sup> Thus, reporting of cramming complaints over 30 days is one method for obtaining relevant data, while at the same time minimizing significant and expensive system changes for carriers.

Those opposing limiting cramming reporting requirements only to those complaints unresolved after 30 days assert that (1) adequate enforcement requires the commission to be informed about all cramming complaints in order to assess the magnitude of the offending behavior and take appropriate action, and (2) a much smaller number of complaints are filed than reflect actual incidents of cramming. Given data from the carriers at the Workshops that most

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<sup>38</sup> See Staff Report, p. 20. To the extent that most wireless carriers operate on a national basis and have regional or national calling centers, billing systems, and customer databases, we are cognizant that California-specific requirements may impose substantial costs and burdens for these carriers. In evaluating new cramming complaint rules, we will look at the cost and benefit of such rules, and weigh it against our commitment to protect consumers from illegal cramming practices.

<sup>39</sup> The Cramming Rule adopted in the CPI decision, GO 168, Part 4, is attached to the Ruling in Appendix B.

<sup>40</sup> See Staff Report, pp. 19-21.

complaints are resolved within 30 days for customer service reasons, would limiting the cramming complaint reporting requirement to those complaints that remain unresolved after 30 days comply with Section 2889.9's mandate to adopt reporting requirements? Would adopting such a requirement provide the Commission with sufficient data to pursue cramming violators in accordance with the statutory intention of Section 2889.9?

We would like to receive further comment on the Staff proposal, and the questions below, including any other alternatives consistent with the statute, the Cramming Rule adopted in the CPI decision, and the Commission's proposed recommendations herein on other aspects of cramming reporting. We expect parties to specifically comment on the cost-benefit analysis of any proposed reporting requirement for all complaints, regardless of when they are resolved.

A cramming reporting requirement serves several purposes. The Commission needs to ensure that carriers, billing aggregators, and third-party vendors are complying with Sections 2889.9 and 2890 by not putting unauthorized charges on subscribers' bills and immediately refunding complaining subscribers who are crammed. Though subscribers who have specifically complained are arguably protected, the Commission may be hamstrung in its enforcement efforts without adequate information about the offending entity. As the FCC, the FTC, and the legislative intent of Sections 2889.9 and 2890 make clear, cramming is often hard to detect, and as a result, some subscribers who are harmed never attempt to get the illegal charges refunded.<sup>41</sup>

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<sup>41</sup> The FCC's website states: "Crammers often try to go undetected by submitting \$2.00 or \$3.00 charges to thousands of consumers;" "Cramming comes in many forms and is often hard to

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We seek comment on the following issues related to the scope of cramming complaints that should be reportable to the Commission:

- We intend to seek cramming complaint reports only with regard to California customers. However, to the extent that carriers may find it unduly burdensome to segregate data to a state-specific level, we seek comment on whether carriers should be permitted the option to report their data on a regional or national level and whether such reporting would provide adequate and timely information. Please provide information on specifics of any assertion of “unduly burdensome.”
- Should the Commission adopt a reporting requirement for cramming complaints that is either for (1) cramming complaints unresolved after 30 days (i.e., the Staff Report recommendation on page 23), (2) all cramming complaints regardless of when they were resolved, or (3) some other reporting requirement to be proposed by the commenting party? Please discuss how such a reporting requirement would comply with Section 2889.9.
- What are the costs and the benefits associated with adopting a reporting requirement for all cramming complaints; reporting only complaints unresolved after 30 days; or a specific reporting requirement proposed by the commenting party? This analysis could include all costs and benefits incurred or accrued by carriers implementing reporting requirements as well as analysis of the costs and benefits that are incurred or accrued by consumers with regard to reporting requirements.
- We seek comment on whether it would be appropriate to adopt a cramming reporting requirement triggered by a metric, for example, percentage of complaints (e.g., number of cramming

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detect unless you closely review your telephone bill;” and “Cramming can also occur if a local or long distance company or another type of service provider does not clearly or accurately describe all of the relevant charges to you when marketing a service. Although you may have authorized the service, you did not understand or were misled about how much it would really cost.” (FCC Website, [www.fcc.gov/cgb/consumerfacts/cramming.html](http://www.fcc.gov/cgb/consumerfacts/cramming.html)). See also Legislative History of AB 2142 (Brown) 1997-1998.

complaints compared to the total billing telephone numbers of a particular entity over the month or some other period of time) or percentage of a refund rate (the total amount of refunds compared to the total amount of intrastate revenues of an entity for the month or some other period of time) triggers a cramming reporting requirement? We also ask parties to comment on how to establish the baseline for such a reporting requirement?<sup>42</sup> If this is a method that the commenting party prefers, please be specific about exactly what the metric should be to trigger the cramming reporting requirement and how it should be set.

- We seek comment on the extent to which billing telephone companies have an obligation to provide reports to the Commission concerning their investigations or information about “bad actor” third-party billing agents or third-party vendors (triggered, for example, by the issuance of a warning(s) that the billing telephone company has issued to such third-party for cramming activities; or whenever it has terminated billing services for a third-party vendor due to cramming activities).<sup>43</sup>
- We also request comment, including detailed cost-benefit analysis, on a proposal that all telephone companies and billing aggregators, agents, and third-party vendors that bill directly through a telephone company submit a monthly cramming

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<sup>42</sup> For example, should the baseline for such a reporting requirement vary based on who is reporting, e.g., a billing aggregator, third-party vendor, or a carrier; the size of a carrier; or the type of complaint?

<sup>43</sup> We note that in our CPI decision, this Commission made billing telephone companies responsible for all charges placed on the telephone bill, regardless of whether it was on the carrier’s behalf or a third-party. Thus, should a carrier have evidence that a third-party has crammed its customers, we expect that the carrier will terminate business relations with the cramming entity, and the carrier would undertake an investigation to ensure that any subscriber who was crammed by said entity obtains an appropriate refund.

complaint report in an Excel spreadsheet containing the following information:<sup>44</sup>

1. The total number of consumer cramming complaints received and the date on which it was received relative to each service provider and billing agent;
2. The service provider name, service provider contact name, service provider address, service provider contact telephone number, and type(s) of service for which the provider is billing for, of each entity that is the subject of cramming complaints;
3. The total number of subscribers billed by (a) working billing telephone number of each entity for which cramming complaints were received; and (b) the total number of cramming complaints related to each service provider.<sup>45</sup>
4. Either (a) the total number of telephone numbers billed for each month OR (b) the total dollars billed and total dollars refunded for each month (also commonly referred to as a “refund rate”).

### **3.5. Three-Year Record Retention Requirement in the Staff Report**

We propose adopting a records retention requirement as set forth in the Staff Report. We believe such a records retention requirement will aid our Enforcement Division when investigating cramming complaints. This proposed record retention requirement is similar to that reflected in D.00-03-020, as

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<sup>44</sup> These proposed reporting requirements for the monthly reports are very similar to those proposed in the Staff Report,<sup>44</sup> except that these reports would be for all cramming complaints, and not just those cramming complaints that are unresolved after 30 days. We also add a proposed requirement for telephone companies to either report a refund rate for cramming complaints or provide the number of telephone numbers billed for each month.

<sup>45</sup> If a telephone company’s billing aggregator has this data for vendors that place charges on a telephone company’s bills, the billing aggregator may furnish this information instead of the telephone company. Where information is provided by the billing aggregator, the telephone company does not need to provide duplicate data.

modified by D.00-11-015. We propose to apply this records retention requirement not only to local exchange carriers, but also to all wireline carriers, wireless carriers, billing agents, and any company that provides products or services that are charged on subscribers' telephone bills, consistent with the direction of the CPI decision and to the extent that these entities collect or receive this data in the normal course of business. To the extent they exist, every billing telephone company, billing agent, or third-party vendor should maintain accurate and up-to-date records of all customer cramming complaints made to or received by it for charges for products or services provided by the billing telephone company, a third-party or its affiliates. Such records should be maintained for three years. In the case of billing telephone companies, the records should include information on all consumer cramming complaints involving entities that bill directly or indirectly on the billing telephone company's bill. In the case of billing agents, the records should also include all consumer cramming complaints received regarding service providers that use the billing agent to bill for the service provider on the telephone corporation bill. The Staff Report stated that these records, to the extent they exist, should include the following information:

1. The subscriber's name;
2. The subscriber telephone number and the unique subscriber identifier, if any;
3. The name of the service provider responsible for the alleged unauthorized charge;
4. The name of the billing agent or billing agents, if any;
5. The amount of the alleged unauthorized charge and the date the charge was incurred and billed;
6. A description of the product or service billed;
7. The disposition of the dispute; and

8. A record of the original subscriber authorization for the charge, if any.

In addition to the record retention requirements set forth in the Staff Report, we seek comment on whether we should adopt the following additional record retention requirements, which are part of the current record retention requirement for wireline carriers and are part of the proposal for monthly reports:

1. The total dollars billed and total amount refunded by the billing telephone company or billing agent for each service provider.
2. The total number of telephone numbers billed by the billing telephone company or billing agents for each service provider.

Although the Staff Report did not recommend adopting these two record retention requirements, we recognize that they could be useful to staff and this Commission in an investigation of alleged cramming.

We seek comment on this proposed record retention requirement. Commenting parties opposing this requirement should include cost-benefit information in its arguments. Those advocating for such requirement should also provide cost-benefit information.

We also solicit comment concerning carriers' obligation to keep or obtain access to sufficient backup records for three years in order to prosecute entities that are alleged to engage in cramming. In general, we believe it is the responsibility of the billing carrier to maintain or have access to sufficient information which would support an enforcement action in case of cramming.

### **3.6. Proposal for Certain Opt-Out Provisions**

The Staff Report recommended adopting certain opt-out provisions for cramming reporting. The Staff Report set forth the following opt-out provisions:

1. On a monthly-basis, a service provider may opt-out of the monthly reporting requirements by submitting a letter to the Director of CPSD stating that there are no reportable complaints for the subject month. The letter should be signed and verified in accordance with Rule 2.4 of the Commission's Rules of Practice and Procedure. The letter shall be submitted within 30 days from the month in which the service provider is seeking the exemption from the monthly reporting requirements.
2. On an annual basis, a service provider may also opt-out of the monthly reporting requirements by submitting a letter to the Director of CPSD setting forth specific reasons as to why it should be exempted from the monthly reporting requirements for the entire subject year. The letter should be signed and verified in accordance with Rule 2.4 of the Commission's Rules of Practice and Procedure. The letter shall be submitted by January 30th for the year in which the service provider is seeking the exemption from the reporting requirements.<sup>46</sup>

The first opt-out provision seems to be clear, reasonable and simple to implement. We propose adopting the first opt-out provision. The Staff Report does not clear contain guidelines for who would be considered exempt under the second opt-out provision. Therefore, we seek comment on whether we should adopt the second opt-out provision, and if so, what guidelines should be established.

#### **4. Conclusion**

This Commission has the responsibility to protect consumers in California from unscrupulous business practices of the entities and utilities that we regulate. The Legislature has recognized that, with regard to cramming, we

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<sup>46</sup> Staff Report, p. 31.

must be take proactive steps in order to prevent cramming. The cramming reporting requirements that we will adopt in this proceeding will be an important tool in our efforts to protect the people of California.

Therefore, **IT IS RULED** that:

1. Interested parties shall file and serve Opening Comments on the topics identified in this ruling on or before April 7, 2008 and Reply Comments on or before April 28, 2008. The Opening Comments shall not exceed 35 pages and the Reply Comments are limited to 25 pages.

2. Those interested in becoming interested parties and filing comments, or otherwise monitoring this proceeding, who are not already on the service list, may do so by informing the Commission's Process Office ([process\\_office@cpuc.ca.gov](mailto:process_office@cpuc.ca.gov)) on or before March 24, 2008 of his/her intent to participate and providing the following information:

- Name and organization represented, if any;
- Address;
- Telephone number;
- E-mail Address; and
- Assignment to the appearance, state service, or information only category.

3. The initial service list will be posted on the Commission's website at [www.cpus.ca.gov](http://www.cpus.ca.gov) and will be updated periodically. Parties should use the website service list for service of all filings.

All filings in this proceeding may be made electronically according to Rule 1.10 of the Commission's Rules of Practice and Procedure. Consistent with those rules, a hard copy of all pleadings shall be concurrently served on the assigned Administrative Law Judge.

Dated February 22, 2008, at San Francisco, California.

/s/ MICHAEL R. PEEVEY

Michael R. Peevey  
Assigned Commissioner



## Appendix A

### Cramming Reporting Requirements in D.00-03-020, as modified by D.00-11-015

#### Subscriber Complaint Reporting Rules

##### Definitions:

- ***Billing Agents:*** Any entity which provides billing service for service providers directly or indirectly through a billing telephone company.
- ***Customer Complaint:*** Any written or oral communication to a Billing Telephone Company or Billing Agent from a person or entity which has been billed for a charge which the person or entity alleges was unauthorized or resulted from false, deceptive, or misleading representations and which was billed, either directly or indirectly, through a billing telephone company.
- ***Service Provider:*** The person or entity that originates the charge or charges that are billed to the subscriber.
- ***Billing Telephone Company:*** A telephone corporation that bills a subscriber for products and services provided by a third-party, including corporate affiliates.

1. **Authorization Required:** Prior to billing or causing to be billed any charge to a subscriber on a telephone corporation bill, the service provider shall obtain the subscriber's authorization. The requirements for written authorizations are set out in Pub. Util. Code § 2890(c). Oral authorizations must contain the same information as written authorizations. All disputed oral and written authorizations for which no record of verification is available are subject to a rebuttable presumption that the charges are unauthorized. With regard to direct dialed telecommunications services, evidence that a call was dialed is prima facie evidence of authorization.
2. **Billing for Authorized Charges Only:** Billing telephone companies may bill subscribers only for authorized charges. Billing agents and service providers

may not submit, directly or indirectly, charges for billing through a billing telephone company that have not been authorized by the subscriber.

**3. Records of Billing Disputes:** Every billing telephone company shall maintain accurate and up-to-date records of all customer complaints made to or received by it for charges for products or services provided by a third-party, including corporate affiliates. Such records shall be retained for three years. Every billing agent shall maintain accurate and up-to-date records of all customer complaints regarding charges billed through a billing telephone company made to or received by it. In the case of billing telephone companies, the records shall also include information on all consumer complaints received involving entities that bill directly or indirectly on the billing telephone company's bill. In the case of billing agents, the records shall also include all consumer complaints received for service providers that use the billing agent to bill for the service provider on the telephone corporation bill. These records shall include the following information:

- a. the subscriber name;
- b. the subscriber telephone number;
- c. the name of the service provider responsible for the charge complained about;
- d. the name of the billing agent or agents, if any;
- e. the amount of the alleged unauthorized charge and the date the charge was incurred and billed;
- f. a description of the product or service billed;
- g. the number of contacts by the subscriber;
- h. the disposition of the dispute;
- i. for billing agents, the total dollars billed and total amount refunded for each service provider; for billing telephone companies, the total dollars billed and total dollars refunded for each service provider for which the billing telephone company directly bills and each billing agent; and
- j. for billing agents, the total number of working telephone number billed by each service provider; for billing telephone companies, the total

number of working telephone numbers billed by each service provider for which the billing telephone company directly bills and each billing agent.

These records shall be provided to Commission staff promptly upon request. Staff may request that any billing telephone company or billing agent provide some or all of this information to the staff on a continuing basis and the entity shall comply with all such requests.

**4. Quarterly Calendar Month Summary Report:** All billing telephone companies and billing agents shall create a calendar month summary report which shall include the following information:

- a) the total number of consumer complaints received each month for each service provider and billing agent;
- b) Billing Telephone Companies shall report the name, address, and telephone number of each entity receiving complaints, billing agents are exempt from Rule 4.b;
- c) the total number of working telephone numbers billed for each entity for which complaints were received;
- d) for billing agents, the total number of subscribers billed by each service provider for which complaints were received; for billing telephone companies, the total number of subscribers billed by each service provider for which the billing telephone company directly bills and each billing agent; and
- e) for billing agents, the total dollars billed by each service provider; for billing telephone companies, the total dollars billed by each service provider for which the billing telephone company directly bills and each billing agent.

The Calendar Month Summary Report shall be submitted to the Director of the Commission's Consumer Services Division pursuant to the following schedule:

- Report for January, February, and March due no later than April 30<sup>th</sup>;
  - Report for April, May and June due no later than July 31<sup>st</sup>;
  - Report for July, August and September due no later than October 31<sup>st</sup>;
- and

- Report for October, November, and December due no later than January 31st of the following year.

If no complaints exist, in lieu of this report, a letter shall be sent to the Director of the Consumer Services Division affirmatively stating that no complaints exist for the quarter.

**5. Effect of Failure to Supply Report.** Pursuant to § 2889.9(f), any billing agent which fails to submit its report in a timely fashion may be the subject of a Commission decision or resolution ordering the billing telephone company to cease providing billing and collections service to that billing agent or service provider, in addition to the Commission's other remedial statutory authority as provided in § 2889.9(b).

**(END OF APPENDIX A)**

## **Appendix B**

### **Cramming Rule Adopted in the CPI Decision**

#### **GO 168, Part 4 – Rules Governing Cramming Complaints**

##### **A. Applicability**

The purpose of these rules is to clarify telephone companies' responsibilities, and the procedures they must follow, for addressing cramming complaints. Cramming occurs when an unauthorized charge is placed on a subscriber's phone bill.

Compliance with these rules does not relieve phone companies of other obligations they may have under their tariffs, other Commission General Orders and decisions, FCC orders, and state and federal statutes. Nor do these rules limit any rights a consumer may have.

The Commission intends to enhance its cooperation with law enforcement authorities and other appropriate government agencies to enforce consumer protection laws.

These rules shall not be interpreted to create any new private right of action, to abridge or alter a right of action under any other state or federal law, or to create liability that would not exist absent the foregoing rules.

The standard to be applied in the construction and application of these rules is that of a reasonable consumer.

##### **B. Definitions**

- **Complaint:** Any written or oral communication from a person or entity that has been billed for a charge that the person or entity alleges

was unauthorized and that was billed, either directly or indirectly, through a telephone company.

- **Investigation:** An inquiry conducted by (i) the person or entity from which the disputed charge originated, (ii) a telephone company that provides billing services to any third-party (including its own affiliate), (iii) the Commission, or (iv) any other relevant government agency, such as the District Attorney's office in the subscriber's county or the AG's office.
- **Telephone company:** A telephone company is any telephone corporation (as defined in Pub. Util. Code § 234) operating within California. This term includes resellers and wireless telephone service providers.
- **Subscriber:** A person or entity that subscribes to a telecommunications network or service subject to Commission jurisdiction.
- **User:** A person or entity using a telecommunications network or service subject to Commission jurisdiction.

## C. Rules

(a) **Billing for Authorized Charges Only:** Telephone companies may bill subscribers only for authorized charges.

(b) **Authorization Required:** In the case of a complaint, there is a rebuttable presumption that an unverified charge for a product or service was not authorized by the user. A telephone company may establish that a user authorized a charge with (i) a record of affirmative user authorization, (ii) a demonstrated pattern of knowledgeable past use, or (iii) other persuasive evidence of authorization. With regard to direct dialed telecommunications services, evidence that a call was dialed is prima facie evidence of authorization.

(c) **Nonpayment of Charges During an Investigation:** While a complaint investigation is pending, the subscriber shall not be required to pay the disputed charge or any associated late charges or penalties; the charge may not be sent to

collection; and no adverse credit report may be made based on non-payment of that charge.

**(d) Complaint Resolution:** If a telephone company receives a complaint that the user did not authorize the purchase of the product or service associated with a charge, the telephone company, not later than 30 days from the date on which the complaint is received, shall either (i) verify and advise the subscriber of the user's authorization of the disputed charge or (ii) undertake to credit the disputed charge and any associated late charges or penalties to the subscriber's bill.

**(e) Other Available Rights:** Nothing herein shall prevent a subscriber from exercising his or her other rights.

**(END OF APPENDIX B)**

## Appendix C

### *Final Staff Workshop Report on Proposed Cramming Reporting Requirements October 13, 2006*

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## **I. Background**

In Decision (D.) 06-03-013, the California Public Utilities Commission (Commission) directed staff to hold a workshop that discusses how all carriers shall meet the statutory requirement of Public Utilities (Pub. Util.) Code Section 2889.9 which states that carriers will be subjected to reporting requirements regarding their resolution of cramming-related complaints.<sup>1</sup> In Ordering Paragraph 7 of D.06-03-013, the Commission directed the staff: “Within 180 days of the issuance of this decision, staff shall hold a workshop to determine appropriate reporting requirements pursuant to Pub. Util. Code § 2889.9. Afterwards, staff shall propose cramming-related reporting requirements that direct carriers to provide, among other items, the number and percentage of cramming complaints that take more than 30 days to resolve.”

The Commission’s Consumer Protection and Safety Division (CPSD) and Telecommunications Division facilitated a series of two workshops in this matter. Commissioner Rachelle Chong presided over both workshops. Also in attendance was Commissioner John Bohn. During the first workshop on July 17, 2006, staff sought parties’ input in answering the following questions:

- A. What are “unauthorized charges”?
  - What are considered unauthorized charges?
  - When are unauthorized charges considered cramming?
- B. Who should report?
  - What is the role of the carrier?
  - What is the role of the billing agent?

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<sup>1</sup> See D.06-03-013, pages 92-93 and Ordering Paragraph 7.

- Are there unique industry segment issues?
- C. What kind of information should be reported?
  - How can we attain consistency in data collection?
  - Which cramming complaints should be reported?
  - How can complaint resolution status be reported?

Parties either attended the workshops or listened in telephonically. Those in attendance for the first workshop included: Rhonda Johnson, Dick Fitzmaurice, and Brad Layous of AT&T; Art Jimenez and Chris Witteman of the Commission's Division of Ratepayer Advocates (DRA); Steve Kukta of Sprint; Tina Armstrong, Bill Schulte and Mike Day of CTIA; Cindy Manheim of Cingular Wireless; Leon Bloomfield of T-Mobile; Kurt Rasmussen and Don Eachus of Verizon; John A. Gutierrez of Comcast; Latanya Linzie of Cox Communications; Sarah DeYoung of Caltel; Enrique Gallardo of Latino Issues Forum; Kirstin Diggs of OFC; Christine Maillaux of TURN; George Granger of Cingular; Michael Bagley of Verizon Wireless; and Patrick Rosvall of Small/Mid-sized LEC's; from the Commission's Telecommunications Division: Jack Leutza, Rosalina A. White and Risa Hernandez; from the Commission's Consumer Services and Information Division: Phil Enis; from the Commission's CPSD: Richard Clark, Jeanette Lo, Linda Woods, Duane Filer, and Steve Kadivar; from Commissioner Chong's staff: Robert Haga; from Commissioner Bohn's staff: Robert Lane.

At this initial workshop, participants provided some useful input and information, but it appeared there was significant confusion and questions about the scope of the "cramming" definition, the scope of the data to be reported, and whether the existing landline only rules for subscriber complaints reporting adopted in D.00-11-015 would still continue in light of the new cramming

reporting requirement contained in D.06-03-013. On the latter issue, we clarify that in light of D.06-03-013, the Commission intends to propose to repeal in an upcoming proceeding on cramming reporting requirements the cramming reporting requirements adopted in D.00-11-015 because it imposes subscriber complaint reporting only on incumbent local exchange carriers and not other regulated voice providers such as Competitive Local Exchange Carriers (CLECs) or wireless carriers. As such, it does not treat similar voice service providers equally and puts an unfair burden on Incumbent Local Exchange Carriers (ILECs). We expect a new Commission decision to put forth a cramming reporting definition that will apply equally to all regulated voice providers and fulfill the requirements of Pub. Util. Code § 2889.9(d).

Staff circulated a discussion paper on Cramming Reporting Requirements (see Appendix A - Discussion Paper) on August 11, 2006. A second workshop was held on August 21, 2006 to discuss the draft proposals in the Discussion Paper.

Those in attendance for the second workshop included: Tom Mahr, Michael Bagley, and Cheryl VerWoert of Verizon Wireless; Rita Whitmore and Cindy Martin of SureWest; Bill Schulte and Mike Day of CTIA; Esther Northrup, Theresa Cabral and LaTanya Linzie of Cox Communications; John Gutierrez of Comcast; Joe Chicoine of Frontier Communications; Patrick Rosvall of Small and Mid-sized LEC's; Nelsonya Causby, Dick Fitzmaurice, Betsy Granger, Adrian Tyler and Brad Layous of AT&T; Ed Feeley of Sprint; Susan Lipper of T-Mobile; Sarah DeYoung of CALTEL; Christine Mailloux of TURN; Kristin Diggs of CFC; Enrique Gallardo of LIF; George Granger of Cingular; Rex Knowles of XO; Kurt Rasmussen and Don Eachus of Verizon; Paul Phillips of Division of Ratepayer Advocates; Peter Casciato of Time Warner Cable; Margaret Tobias of Tobias Law

Office; William Wallace of Verizon Wireless; from the Commission's Telecommunications Division: Chris Poschl and Risa Hernandez; from the CPSPD: Steve Kadivar, Rudy Sastra, Jim Howard, Gaylee Adell, Linda Woods, Duane Filer, and Jeanette Lo; from Commissioner Chong's staff: Robert Haga; from Commissioner Bohn's staff: Robert Lane.

Participants filed written comments on September 8, 2006 (see Appendix B). Staff summarizes the participants' comments in this report and incorporates their suggestions, where we agree with parties' recommendations. In this report, staff proposes a definition of "unauthorized charges" and how they relate to cramming, clarifies when an inquiry becomes a "complaint," identifies what entities should report and why, and outlines its proposed cramming reporting requirements. This staff report also includes input from the offices of Commissioners Chong and Bohn.

## **II. "Cramming" and "Unauthorized Charges"**

In proposing cramming reporting requirements, staff sought to define "unauthorized charges." Pub. Util. Code § 2890(a) states that "[a] telephone bill may only contain charges for products or services, the purchase of which the subscriber has authorized." In D.06-03-013, the Commission stated that "cramming is the placement of an unauthorized charge on a consumer's phone bill."<sup>2</sup> It was therefore instructive to outline what staff proposes can be considered as an unauthorized charge for cramming reporting purposes.

In defining what unauthorized charges include, staff was guided by references to cramming gleaned from the Federal Trade Commission (FTC), the

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<sup>2</sup> D.06-03-013, p. 75

Federal Communications Commission (FCC), and other state utility agencies. Ultimately, staff was persuaded by the FCC's guideline because it provides consumer protection from unauthorized charges as well as misleading or deceptive charges.

Parties including Cox Communications, AT&T California, The Utility Reform Network (TURN), Latino Issues Forum (LIF), Small and Mid-sized LEC's, Comcast, and Joint Wireless Carriers (JWC), provided comments on this issue. At the second workshop and from written comments, parties representing the telecommunications utilities were generally opposed to including "misleading or deceptive charges" in the definition, while consumer representatives were generally supportive. In addition, carriers such as Cox Communications, assert that the definition should focus on unauthorized products or services as opposed to unauthorized charges. AT&T states that the inclusion of misleading or deceptive charges into the definition would make it difficult for service representatives to decipher between a cramming and a general billing dispute, thus, having a potential to cause inaccurate reporting. The Small and Mid-Sized LECs also argue that inaccurate reporting could include billing disputes that contain some allegation that the customer was misled, which may not necessarily be cramming, and would impose unreasonable reporting burdens on carriers and result in an overly broad set of reported complaints. Consumer advocates such as the LIF, support the broader definition as less ambiguous than the narrow definition. TURN raises concerns that the danger in excluding a significant number of cramming complaints by adopting an overly restrictive definition outweighs any problem the carriers may have training its customer service representatives.

Staff recommends that in establishing cramming reporting requirements, the Commission adopt the FCC guidelines about cramming which states: “the practice of including, placing, or submitting unauthorized, misleading, or deceptive charges for products or services on an end-user consumer’s telephone bill.”<sup>3</sup> In consumer bulletins, the FCC explains, “Crammers rely on confusing telephone bills in an attempt to trick consumers into paying for services they did not authorize or receive, or that cost more than the consumer was led to believe.”<sup>4</sup> The FCC website page on cramming explains how cramming occurs:

Cramming can also occur if a local or long distance company or another type of service provider does not clearly or accurately describe all of the relevant charges to you when marketing a service. Although you may have authorized the service, you did not understand or were misled about how much it would really cost.”<sup>5</sup>

Staff is persuaded by the FCC’s view, which includes misleading or deceptive charges, and proposes reporting requirements that capture this level of consumer protection. Staff therefore proposes that the following should be subject to cramming reporting: customer complaints seeking to remove or reduce unauthorized charges for products or services, including misleading and deceptive charges.<sup>6</sup> This applies to communications and non-communications charges, and recurring and non-recurring charges that appear on consumer’s

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<sup>3</sup> In the Matter of Long Distance Direct, Inc., Notice of Apparent Liability for Forfeiture, 14 FCC Rcd 314 (1998) at 315.

<sup>4</sup> “FCC Consumer Facts,” at <http://www.fcc.gov/cgb/consumerfacts/cramming.html>.

<sup>5</sup> The FCC explains how cramming occurs: “FCC Consumer Facts,” at <http://www.fcc.gov/cgb/consumerfacts/cramming.html>

<sup>6</sup> See, D.06-03-013, GO 168, Part 4. at B.

telephone bill placed on it by the carrier and/or a third-party such as a billing agent.

While staff proposes that complaints regarding unauthorized charges stemming from misleading or deceptive charges be considered as reportable cramming complaints, staff recognizes that certain consumer billing complaints may not constitute cramming *per se*. In such situations, the issue often becomes the level of clear disclosure to the consumer of the charge. In such cases, whether cramming actually occurred is a factual issue.

With direct dialed telephone services, Pub. Util. Code § 2890 provides that evidence that a call was dialed is *prima facie*<sup>7</sup> evidence of authorization.<sup>8</sup> Other authorized charges may include government-mandated fees, surcharges, or charges on a consumer's bill. Complaints about charges deemed authorized should not be reported.

Below are some examples that **would not** be considered cramming complaints for reporting purposes, some of which were provided by TURN:<sup>9</sup>

- A consumer purchases and authorizes a voice mail service but it does not work with the type of cellular service that the consumer has, and the consumer wants the charge for the voice mail service removed from his phone bill;

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<sup>7</sup> "Prima facie" means "at first view" in Latin. It refers to evidence that is sufficient to raise a presumption of fact or establish the fact in question unless rebutted.  
<http://www.lectlaw.com/def2/p078.htm>.

<sup>8</sup> PU Code Section 2890(d)2(D) specifically states that ". . . In the case of a dispute, there is a rebuttable presumption that an unverified charged for a product or service was not authorized by the subscriber and that the subscriber is not responsible for that charge. With regard to direct dialed telecommunications services, evidence that a call was dialed is prima facie evidence of authorization. . . ."

<sup>9</sup> TURN's Comments, pp. 5-6.

- A web-based “Slingbox” installed in a customer’s home does not work. The customer is dissatisfied and wants the charge removed from her phone bill;
- Complaints about service quality;
- Complaints about errors or billing mistakes;
- Complaints about rounding of minutes/charges;
- Complaints about government-mandated charges or taxes;
- Complaints about charges incurred by another authorized user of the phone;
- Charges incurred through a stolen or lost phone. Staff does not consider complaints over charges placed on a stolen phone as cramming complaints. Instead, such consumer complaints should be considered complaints over what was done with stolen property. Similarly, a complaint over charges placed on a lost phone is not cramming. Consumers bear the responsibility of notifying the carrier of a lost or stolen phone immediately, or may bear some responsibility for charges not placed by an authorized user before such a report with the carrier is filed;<sup>10</sup>
- Billing questions. Customer questions about the number of minutes of a specific call or call duration is not a cramming complaint. Staff considers these as billing inquiries until and unless the consumer elevates the inquiry to a complaint about the charges being unauthorized, misleading or deceptive; and
- Complaints over charges where the customer is unhappy with the service and wishes to cancel.

Below are some examples that **would be** considered cramming complaints for reporting purposes:

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<sup>10</sup> TURN comments at footnote 3, page 5: TURN disagrees with the sentence “Consumers bear the responsibility...” by stating that “...it is an incorrect interpretation of PU Code Section 2890,

*Footnote continued on next page*



- The inclusion of charges that are not part of the contract, allowed under the agreement entered into by the customer, or when the charges in question were not expressly authorized by the consumer;
- The inclusion of charges for calls that the consumer did not make, or for downloads that a consumer did not authorize (e.g. ringtones, screensavers, or wallpaper);
- The “upgrade” of an existing calling plan that would entail additional charges or higher fees, when that upgrade was made without the affected customer’s authorization;
- Unauthorized, additional fees or charges above and beyond the cost of a one-time service that the customer authorized through a toll free number (e.g. an entertainment or information service);
- Charges for telephone services or features that the consumer never ordered or authorized. (e.g. voice mail, caller ID, special service packages or fee-for-service charges such as 900 calls);
- Charges for a particular service after the consumer cancelled the service; and
- Charges incurred when a consumer authorized a service, but was misled about the true cost of that service.

### **III. What is Considered as “Authorization”**

Staff, in the Discussion Paper, proposed that the definition of authorization contained in D.00-11-015,<sup>11</sup> Attachment A,<sup>12</sup> be adopted:

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contract law, and conflicts with legislation passed by the CA Assembly and Senate and currently waiting signature by the Governor.”

<sup>11</sup> Rulemaking on the Commission's Own Motion to Consider Adoption of Rules Applicable to Interexchange Carriers for the Transfer of Customers Including Establishing Penalties for Unauthorized Transfer; Investigation on the Commission's Own Motion to Consider Adoption of Rules Applicable to Interexchange Carriers for the Transfer of Customers Including

*Footnote continued on next page*

**1. Authorization Required:** Prior to billing or causing to be billed any charge to a subscriber on a telephone corporation bill, the service provider shall obtain the subscriber's authorization. The requirements for written authorizations are set out in Pub. Util. Code § 2890(c).<sup>13</sup> Oral authorizations must contain the same information as written authorizations. All disputed oral and written authorizations for which no record of verification is available are subject to a rebuttable presumption that the charges are unauthorized. With regard to direct dialed telecommunications services, evidence that a call was dialed is *prima facie* evidence of authorization.

**2. Billing for Authorized Charges Only:** Billing telephone companies may bill subscribers only for authorized charges. Billing agents and service providers may not submit, directly or indirectly, charges for billing through a billing telephone company that have not been authorized by the subscriber.<sup>14</sup>

Only a few comments were received from participants on what constitutes authorization. Cox contends that staff's proposed definition should reflect that a service provider must obtain authorization for products and services, and that

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Establishing Penalties for Unauthorized Transfer, Attachment A, Page 1, Subscriber Complaint Reporting Rules.

<sup>12</sup> Subscriber Complaint Reporting Rules, page 1. Attachment A:

[http://www.fcc.gov/Bureaus/Common\\_Carrier/Other/cramming/cramming.html](http://www.fcc.gov/Bureaus/Common_Carrier/Other/cramming/cramming.html)

<sup>13</sup> PU Code Section 2890(c) states "The commission may only permit a subscriber's local telephone service to be disconnected for nonpayment of charges relating to the subscriber's basic local exchange telephone service, long-distance telephone service within a local access and transport area (intraLATA), long-distance telephone service between local access and transport areas (interLATA), and international telephone service.

<sup>14</sup> D.00-11-015 - *Rulemaking on the Commission's Own Motion to Consider Adoption of Rules Applicable to Interexchange Carriers for the Transfer of Customers Including Establishing Penalties for Unauthorized Transfer; Investigation on the Commission's Own Motion to Consider Adoption of Rules Applicable to Interexchange Carriers for the Transfer of Customers Including Establishing Penalties for Unauthorized Transfer*, OP 1, Subscriber Complaint Reporting Rules, Attachment1, p. 1.

subscribers may be billed only for charges corresponding to authorized products and services.<sup>15</sup> Staff disagrees with Cox's proposal. D.06-03-013, at 74, takes the position that cramming is the placement of an "unauthorized charge on a bill," not the charge of an unauthorized product or service. The JWC argue that the definition proposed in the Discussion Paper is confusing and goes beyond the statutory definition.<sup>16</sup> They propose that Pub. Util. Code § 2890(d)(2)(D) be used.

Staff adopts JWC's recommendation and agrees that the definition contained in the Pub. Util. Code is clearer and more direct. Therefore, staff recommends that the definition of authorization contained in Pub. Util. Code § 2890 (d) (2) (D), be used for cramming reporting purposes.

... "In the case of a dispute, there is a rebuttable presumption that an unverified charge for a product or service was not authorized by the subscriber and that the subscriber is not responsible for that charge. With regard to direct dialed telecommunications services, evidence that a call was dialed is prima facie evidence of authorization."

#### **IV. What is Considered a "Resolved" Complaint**

Staff did not provide guidelines about what complaints would be considered "resolved" in the Discussion Paper. In comments, Verizon suggested that staff define what is or is not considered a resolved complaint. Staff agrees and proposes that the definition of "Complaint Resolution" in D.06-03-013, Part 4, be used in determining what is considered resolved for cramming reporting purposes. The section states:

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<sup>15</sup> See Cox Communications Comments, p. 4.

<sup>16</sup> See Comments of the Joint Wireless Carriers, p. 6.

“If a telephone company receives a complaint that the user did not authorize the purchase of the product or service associated with a charge, the telephone company, not later than 30 days from the date on which the complaint is received, shall either (i) verify and advise the subscriber of the user’s authorization of the disputed charge or (ii) undertake to credit the disputed charge and any associated late charges or penalties to the subscriber’s bill.”

## **V. “Inquiry” vs. “Complaint”**

At the workshop, staff sought to distinguish an “inquiry” from a “complaint,” in order to guide reporting entities in providing the Commission with consistent cramming complaint data. The Commission does not wish to receive data regarding inquiries that do not rise to the level of complaints.

TURN commented that the definition of “complaint” in GO 168 “should be sufficient to ensure that only complaints, not inquiries, will be reported.”<sup>17</sup> Cox agrees and further recommends that:<sup>18</sup>

“...an inquiry can evolve into a complaint at some point, and does become reportable as a cramming complaint if and when the consumer expresses her objection to being billed for products or services not authorized by the consumer or otherwise requests the removal of charges associated with products and services not authorized by the consumer and such complaint is not resolved within 30 days of submission.”

The Small and Mid-sized LECs wrote that a complaint refers to a customer’s affirmative, unequivocal expression that a charge on the customer bill is unauthorized. By contrast, an “inquiry” is a more “examination into facts and

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<sup>17</sup> See TURN’s comments, p. 13.

<sup>18</sup> See Cox’s comments, p. 12.

principles or request for information about charges on bill, or about the terms and conditions of service.”<sup>19</sup>

Staff recommends that the definition of “complaint” in D.06-03-013 be used for cramming reporting purposes. Complaint is defined in D.06-03-013, Part 4, Rules Governing Cramming Complaints, (B) Definitions, as: “Any written or oral communication from a person or entity that has been billed for a charge that the person or entity alleges was unauthorized and that was billed either directly or indirectly, through a telephone company.”<sup>20</sup> Both complaint and an inquiry can be initiated by the oral or written expression of a grievance. In contrast, staff views consumer contact regarding general questions about a charge on their bills as an “inquiry.” Although carriers and billing agents should track, record and resolve a consumer contact expressing general dissatisfaction with a bill, these inquiries are not reportable for cramming reporting purposes. Staff recognizes that an inquiry can evolve to a complaint at some point, and would become reportable if and when the consumer expresses his or her objection to a specific charge or denies a charge or otherwise request the removal or reduction of an unauthorized charge.

## **VI. Who Should Report and Why**

Staff proposed during the workshop that billing telephone companies (both wireline and wireless carriers) and their billing agents including third-party vendors are required to report cramming data to the Commission.<sup>21</sup> The Legislature and this Commission have made it clear that billing telephone

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<sup>19</sup> See Small and Mid-sized LEC’s comments, p. 5.

<sup>20</sup> D.06-03-013, GO 168, Part 4. at B, “Complaint” definition.

companies, service providers, and billing agents and any third parties involved in the billing “food chain” share in the responsibility that consumers’ phone bills only include authorized charges. D.06-03-013 states that, “Pub. Util. Code § 2889.9 and § 2890 were enacted in order to deter cramming and clarify related rights and remedies available to California consumers. The Legislature directed that these laws be read together. The Legislature stipulated that Pub. Util. Code § 2889.9 and § 2890 apply not only to utilities, but also to non-utility billing agents and other persons or corporations responsible for generating a charge on a subscriber’s phone bill. Thus the Commission may impose penalties on persons or corporations that violate the cramming statutes, even if the violators typically are not subject to our jurisdiction.”<sup>22</sup>

P. U. Code § 2889.9(d) states:

“The commission shall establish rules that require each billing telephone company, billing agent, and company that provides products or services that are charged on subscribers’ telephone bills, to provide the commission with reports of complaints made by subscribers regarding the billing for products or services that are charged on their telephone bills as a result of the billing and collection services that the billing telephone company provides to third parties, including affiliates of the billing telephone company provides to third parties, including affiliates of the billing telephone company.”

In D.00-11-015,<sup>23</sup> the Commission adopted the following definitions of a billing agent, service provider, and a billing telephone company:

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<sup>21</sup> CPSD Discussion Paper on Cramming-related Reporting Requirements, p. 14.

<sup>22</sup> Id, p. 13.

<sup>23</sup> D.00-11-015, Attachment A.

**Billing Agents:** Any entity which provides billing service for service providers directly or indirectly through a billing telephone company.

**Service Provider:** The person or entity that originates the charge or charges that are billed to the subscriber.

**Billing Telephone Company:** A telephone corporation that bills a subscriber for products and services provided by a third-party, including corporate affiliates.

In D.06-03-013, the Commission established new rules governing cramming complaints to cover wireline carriers, billing aggregators, resellers and wireless telephone service providers in a non-discriminatory and equal basis and defined a telephone company as:

**Telephone company:** A telephone company is any telephone corporation (as defined in Pub. Util. Code § 234) operating within California. This term includes resellers and wireless telephone service providers.<sup>24</sup>

Just about all of the parties submitted comments on the topic of who should report and why. Parties raises issues in regards to duplicative complaint reporting, non-applicability of the rules, difference of opinion on interpretation of the existing rules on whether carriers must self report, and the lack of clarity on who should report such as billing aggregators.

Verizon raises the issue of possible duplicative reporting of complaints and proposes that the requirements should clarify that one or the other should report.<sup>25</sup>

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<sup>24</sup> D.06-03-013, GO 168, Part 4-Rules Governing Cramming Complaints, p. A-20.

<sup>25</sup> Verizon, p. 3.

AT&T proposes that the Commission should clarify that billing telephone companies are not required to report cramming complaints received by their billing agents, including third-party vendors.<sup>26</sup>

The Small and Mid-sized LECs state that the reporting requirements, per 2889(d), should apply only to the billing of products or services that are charged on their telephone bills as a result of the billing and collection services that the billing telephone company provides to third parties, including affiliates of the billing telephone company.<sup>27</sup>

Comcast agrees with the Small and Mid-sized LECs and proposes that the reporting requirements should be limited to complaints associated with the billing and collection services that the billing telephone company provides to third parties, and affiliates of the billing telephone company in accordance with P. U. Code § 2889.9(d).<sup>28</sup>

JWC argue that Pub. Util. Code § 2889.9 is focused on complaints to third parties including affiliates not to complaints regarding products and services provided by the carrier directly.<sup>29</sup> Additionally, they argue that expanding the reporting requirements beyond the scope defined by D.06-03-013 is not warranted because Part 4 of GO 168 dictates carriers expeditious complaint resolution obligation, within 30 days, the Mobile Marketing Associate (MMA) established a two tiered affirmative approach which is dependent of the charge for the service, the JWC have procedures in place to monitor and identify and to

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<sup>26</sup> AT&T, p. 2.

<sup>27</sup> Small & Mid-sized LECs, p. 4.

<sup>28</sup> Comcast, p. 1.

<sup>29</sup> Joint Wireless Carriers, p.1.



root out any “bad actors,” and the CPI decision includes education and reinstituting the Regulatory Complaint Resolution forum.<sup>30</sup>

DRA asserts that the Commission should demand the most accurate and comprehensive complaint reporting possible from the billing telephone companies, billing aggregators, and third-party providers identified in Pub. Util. Code Sections 2889.9 and 2890.<sup>31</sup>

TURN states that Pub. Util. Code § 2889.9(d) requires each billing telephone company, billing agent, and company that provides products or services that are charged on bill to provide Commission with reports.<sup>32</sup> Additionally, TURN requests that “billing aggregators” as an entity be required to report.<sup>33</sup> TURN points out that § 2889.9(i) provides Commission with authority to broaden reporting requirements to carriers' themselves.<sup>34</sup> Finally, TURN suggests that only those entities with direct customer contact or whose name may appear on a bill should be the ones to report.<sup>35</sup>

LIF states that Pub. Util. Code § 2889.9 and § 2890 established that an entity, either a carrier or billing agent, has the responsibility including reporting requirements. LIF believes it is untenable that a carrier or a billing agent will accept compensation for acting as a billing agent for a company, but will then be unable to identify it if the company commits a cramming violation. LIF points

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<sup>30</sup> *Id.*, p. 2-5.

<sup>31</sup> DRA, p. 15.

<sup>32</sup> TURN, p.3.

<sup>33</sup> *Id.*, p. 14.

<sup>34</sup> *Id.*, p.3.

<sup>35</sup> *Id.* p. 14.

out that the Commission will not be able to perform the investigations required in § 2889.9(e) if it is unable to identify the companies ultimately responsible for the cramming.<sup>36</sup>

Staff agrees in part with Verizon that there could be an issue of duplicative cramming reporting but are unsure of the extent and as such do not believe that we should limit the reporting to either the billing telephone company or the billing agent. We do however agree that the consumer could call both the billing telephone company and the billing agent. The staff proposes that in order to address this issue the underlying cramming reporting data should be specific enough so that staff can identify those duplicates as further explained in the section Reporting Requirements and Contents. We agree with AT&T that the billing telephone company does not have to report complaints that other entities receive but emphasize that billing telephone companies must report cramming complaints they receive about their own products and services. Staff disagrees with Comcast, Small and Mid-sized LECs, and JWC that reporting should be limited to only third-party or affiliates and stresses that the ultimate responsibility for resolving consumer cramming-related complaints is the billing telephone company. Staff understands that consumers may in fact call the billing aggregator or affiliate and the billing company may not be aware of that complaint and as result propose that those entities that get complaints must report. Staff agrees with the JWC that there are numerous initiatives to assist consumers but they are not intended to replace cramming-related reporting requirements. Staff agrees with DRA, TURN, and LIF that Pub. Util. Code §

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<sup>36</sup> LIF, p. 3.

2889.9(d) requires each billing telephone company, billing agent, and company that provides products or services that are charged on bill to provide Commission with reports. The telecommunications industry has grown in such a way that a consumer's phone bill may now include charges for a growing variety of products and services and the quantity of entities involved with the delivery of that downloadable content charge on the consumer's phone bill has grown to such a extent that we must modify our existing cramming related reporting requirements in regards to who should report.

In determining who should report cramming-related complaints we propose that billing telephone companies (both wireline and wireless) and their billing agents including third-party vendors are required to report cramming data to the Commission. In essence, those entities that get cramming complaints should be the ones that provide cramming-related complaint reports to the Commission.

## ***VII. Reporting Requirements and Contents***

D.06-03-013, Section 9.3, Adoption of Cramming Rules, specifies that staff is to "...propose cramming-related reporting requirements that direct carriers to provide, among other items, the number and percentage of cramming complaints that take more than 30 days to resolve."

### ***A. Report Frequency***

In the Discussion Paper, staff proposed requiring monthly reports of cramming complaints that are aged over 30 days from the date of receipt of the cramming complaint by the carrier or third-party billing agent.

The JWC stated that “there has not been demonstrated need for monthly reporting or that such frequent reporting justifies the burden on either the carriers required to produce such reports or the staff who are required to digest the material and take appropriate action. Instead, the JWC recommend a measured approach which would provide that reporting be done on a quarterly basis. If, after a reasonable period of time, the data illustrates that there is a need for more frequent reporting (e.g., more complaints than anticipated are reported), then the frequency of the reports can be modified.”<sup>37</sup> Cox California Telecom, LLC, recommends quarterly reporting, calculated on a monthly basis: “Monthly reporting fails to strike the necessary balance between the Commission’s wish to have current data and the burden on reporting entities. With monthly reporting, the Commission would have data on a more frequent basis, but such data could not (and should not) be used in isolation for purposes of determining whether a carrier is engaged in cramming. The Commission should review data from several months to determine if a pattern of cramming is apparent. Monthly reporting is very burdensome on reporting entities, yet it does not provide any meaningful benefit to the Commission.”<sup>38</sup>

TURN believes, “In any enforcement work, no matter the industry, speed is of the essence. It is rare that bad actors, who clearly know they are breaking the law and defrauding customers, will remain in business in any one place for very long. If the Commission has to wait over a month (the 30 day waiting

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<sup>37</sup> “Comments on CPSD Discussion Paper regarding Cramming Reporting Requirements”, dated September 8, 2006, submitted by Michael B. Day, Counsel for CTIA- The Wireless Association on behalf of the Joint Wireless Carriers, p. 8.

<sup>38</sup> Comments of Cox California Telecom, LLC DBA Cox Communications on Cramming Reporting Requirements, dated September 8, 2006, P. 7

period plus the reporting period) before it even received the statistics, then it will be much longer before the Commission staff can investigate a particular bad actor based on those statistics. If, instead, staff was receiving all cramming-related complaints called into the carrier on an ongoing basis, this could be extremely valuable in gathering enough data and evidence to move quickly to investigate and shut down a crammer.”<sup>39</sup>

The LIF contends that “in order to fulfill the requirements of P. U. Code § 2889.9, the reporting period would have to be monthly. Section 2889.9(e) requires a Commission investigation whenever more than 100 complaints are received within *any* 90-day period. In order to accurately track whether 100 complaints are received within *any* 90-day period, a monthly reporting would be needed. A quarterly reporting period would hinder the Commission’s ability to ascertain if 100 complaints are received within any 90-day period-complaints might be stacked towards the end of one quarterly period and the beginning of the next period, would not reach the 100 complaint threshold in either reporting period, but would surpass the threshold in a 90-day period that straddled the reporting periods. A monthly reporting period would make the Commission’s work much easier. In addition, quarterly reports would not allow the Commission to timely respond to fly-by-night companies that crammed.”<sup>40</sup> Staff believes that the requirement in Pub. Util. Code § 2889.9(e) that calls for Commission investigation whenever more than 100 complaints are received

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<sup>39</sup> TURN comments titled Re: Consumer Protection Initiative on Cramming Reporting Requirements, dated September 8, 2006, as submitted by Christine Maillaux, Staff Attorney, pp. 12-13

<sup>40</sup> Latino Issues Forum workshop comments titled “Comments on Cramming Reporting Requirements,” dated September 8, 2006, P.2

*Footnote continued on next page*

within any 90-day period applies to complaints received by the Commission (i.e. complaints received by the Consumer Affairs Branch).

Staff recommends monthly reporting because it will provide the Commission with timely information that enables early detection and action against those entities that are engaged in cramming activities. Staff believes that this benefit outweighs the burden to reporting entities of monthly reporting.

***B. Report Contents***

In the Discussion Paper, staff proposed that the reports should include:

- a. Monthly reports of cramming complaints over 30 days from the date of notice of the cramming complaint to the carrier or third-party billing agent.
- b. Aging report of unresolved cramming complaints; within the following periods: a) 30 to 60 days, b) 60 to 90 days and c) over 90 days.

Staff proposed that the report should contain the following information:

5. the total number of consumer cramming complaints received for that month that remain unresolved after 30 days;
6. the name, address, and telephone number of each entity that is the subject of cramming complaints;
7. the total number of subscribers billed (by working billing telephone number) by each entity for which cramming complaints were received;
8. the total number of cramming complaints, relative to each service provider, that remain unresolved from when the complaint was initially received, within the following time periods:
  - a. between 30 and 60 days;
  - b. between 60 and 90 days; and

c. beyond 90 days.

The reports should be due by the last business day of the following month. It is contemplated that carriers will have 270 days to put in place such reporting scheme from the date the Commission issues a final decision or resolution putting in place this reporting requirement, due to complexities expressed at the workshop as to changing customer service representative databases to accommodate this type of reporting at a state level.

The JWC state that “[we] agree that the first reporting requirement [the total number of consumer cramming complaints received for that month that remain unresolved after 30 days] proposed in the Draft Report is consistent with Ordering Paragraph 7 of Decision 06-03-013 and, therefore is appropriate for adoption.” With regard to the second reporting requirement, which relates to the name address, and telephone number of each entity that is the subject of cramming complaints, the JWC state: “current systems are not designed to track this type of information or generate these types of reports. The JWC submit that for many carriers, meeting this requirement will only be possible because, as discussed above, the process they will use to identify the cramming complaints over 30 days will be manual. Specifically, some carriers’ customer care records do not list the third-party vendors which provide various services for the customer. Rather it will list the carrier as the ‘responsible party’ for the service.’ ...’it will require an investigation of the customer’s billing records to identify the vendor which is associated with the charges being complained about. This task is complicated by the fact that many third-party charges which

appear on wireless bills may only appear for a month.”<sup>41</sup> The JWC state that the third reporting requirement- reporting on the total number of subscribers billed (by working telephone number) by each entity for which cramming complaints were received- “appears to be beyond the bounds of the reporting requirements envisioned in D.06-03-013, but cannot be accommodated by the carriers’ customer care systems without completely overhauling the carriers’ systems.”<sup>42</sup>

The Small and Mid-sized LECs took issue only with the third reporting requirement -- the total number of subscribers billed (by working telephone number) by each entity for which cramming complaints were received. They stated, “information may not be readily available in carriers’ billing systems regarding every entity against which a cramming allegation is made’...’carriers have no business reason to maintain figures regarding the subscribership of third-party entities who may generate charges on carriers’ bills. This reporting requirement should be eliminated.”<sup>43</sup>

Cox did not take issue with reporting the four data points the Discussion Paper, but did offer several suggestions on how to rephrase the data points to ensure the data is relevant. Specifically, Cox suggested, “To determine the percentage of complaints per subscribers billed, the Commission should collect

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<sup>41</sup> “Comments on CPSD Discussion Paper regarding Cramming Reporting Requirements”, dated September 8, 2006, submitted by Michael B. Day, Counsel for CTIA- The Wireless Association on behalf of the Joint Wireless Carriers, P. 8 & 9

<sup>42</sup> Ibid P. 9

<sup>43</sup> “Comments of Small and Mid-sized LECs on Discussion Paper Addressing Cramming Reporting Requirements” dated September 8, 2006, Patrick M. Rosvall, Attorney for the Small and Mid-sized LECs. P.7



the number of complaints received for a given billing interval and the number of subscribers billed during that same billing interval. For example, a Billing Telephone Company invoices a subscriber in August, the subscriber does not submit a complaint until October 1 and the complaint is unresolved as of November 1. In this example, the reporting entity should report the complaint as being unresolved for the month of October under No. 1 [reporting requirement] and the reporting entity should report the total number of subscribers billed for the month of August. This would provide a proper comparison of complaints received and subscribers billed for a given billing interval.'... 'If the complaints and subscribers are not based on the same period of time, staff will not be able to properly calculate the percentage of complaints.'"<sup>44</sup> Cox also recommended that the second reporting requirement -- identity of the entity that is the subject of the cramming complaint -- be revised to relate only to those complaints aged over 30 days.

TURN recommended that the final cramming reporting requirements require "Every billing telephone company, billing agent, and company that provides products or services that are charged on subscribers' telephone bills shall create a calendar monthly summary report which shall include the total number of cramming-related customer complaints received . . . ."<sup>45</sup>

The LIF stated: "It is untenable that a carrier or a billing agent will accept compensation for acting as a billing agent for a company, but will then be unable

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<sup>44</sup> Comments of Cox California Telecom, LLC DBA Cox Communications on Cramming Reporting Requirements, dated September 8, 2006, P. 7

<sup>45</sup> TURN comments titled Re: Consumer Protection Initiative on Cramming Reporting Requirements, dated September 8, 2006, as submitted by Christine Maillaux, Staff Attorney, p. 6

to identify it if the company commits a cramming violation. Carriers and billing agents should have the name, address, and telephone number of companies for whom they act as billing agents. It is fundamental that all of the contact information referenced in the “Contents of Monthly Cramming Complaints Report” on page 15 of the Discussion Paper be included in the monthly reports.”<sup>46</sup> DRA argued that “it is in the interest of the carriers as well as consumers that complaint tracking and reporting extend to all complaints, not just those unresolved for 30 days or longer, because even where the utility promptly resolves the complaint it is not just the utility conduct which is at issue here. Pub. Util. Code § 2889.9(d) requires reporting where the product or service billed on the utility customer’s bill was sold by a third-party vendor. There are two reasons to track complaints aged less than 30 days: 1) in order to identify bad actors, particularly here-today, gone-tomorrow vendors, as soon as possible; and 2) to make visible schemes where the amounts are small automatically refunded on customer complaints, but paid by a larger number of unsuspecting victims.” DRA further contends that in P. U. Code § 2889.9(d) “the California Legislature has commanded the Commission to: establish rules that require each billing telephone company, each billing agent, and companies that provide products or services that are charged on subscribers’ telephone bills, to provide the Commission with reports of complaints made by subscribers . . . There is no 30-day limitation written into the statute. In the absence of any time-limiting or other limiting adjectives applied to “reports of complaints” the statute must be

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<sup>46</sup> Latino Issues Forum workshop comments titled “Comments on Cramming Reporting Requirements”, dated September 8, 2006, p.3

read to require the reporting of all complaints regarding the billing for third-party services. DRA believes that the Commission may contravene the letter and intent of Pub. Util. Code § 2889.9(d) by inserting into the statute reporting requirements a time-limiting factor not contemplated by the Legislature.”<sup>47</sup>

Staff finds the JWC position regarding the inability of carriers to identify the third-party vendor associated with cramming complaints particularly troublesome. P. U. Code § 2890(2) states, in pertinent part, “Any person, corporation, or billing agent that charges subscribers for products or services on a telephone bill shall do all of the following: (A) Include, or cause to be included, in the telephone bill the amount being charged for each product or service, including taxes or surcharges, and a clear and concise description of the service, product, or other offering for which the charge has been imposed. (B) Include, or cause to be included, for each entity that charges for a product or service, information with regards to how to resolve any dispute about that charge, including the name of the party responsible for generating the charge...” If carriers are, in fact, including the name of the product or service provider on their customer bills, then identifying those entities in their monthly report to the Commission, while perhaps a manual process, should not be particularly problematic. This is especially true given the JWC assertion that “the number of cramming complaints which are not resolved in a 30 day time frame is expected to be very small.”<sup>48</sup>

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<sup>47</sup> DRA Comments, pages 9 through 11.

<sup>48</sup> “Comments on CPSD Discussion Paper regarding Cramming Reporting Requirements”, dated September 8, 2006, submitted by Michael B. Day, Counsel for CTIA- The Wireless Association on behalf of the Joint Wireless Carriers, P. 10

It is the Commission's position that carriers that bill California consumers are responsible for controlling access to consumer telephone bills and, as such, they have an obligation to know who is placing charges on those telephone bills. To effectively fulfill its responsibility of monitoring and taking corrective action against those entities that cram California consumers, Commission staff must be able to identify those entities engaging in cramming activities. Further, to effectively prosecute crammers, Commission staff must be able to identify the consumers that have been harmed by those entities and be able to demonstrate a direct relationship between the crammers and parties they have harmed. Accordingly, staff proposes that the following items be reported monthly on unresolved cramming complaints aged over 30 days:

- 1) The date the reporting entity first received the complaint,
- 2) The name, address and telephone number of the entity that allegedly crammed a subscriber,
- 3) The aggregate dollar amount of the disputed charge(s) that are attributable to each entity that is alleged to have crammed a consumer , and
- 4) A calculation of the percentage of cramming complaints unresolved over 30 days when compared the total number of subscribers billed (by working billing telephone number) by each entity for which cramming complaints were received.

The monthly reports are due to the Commission by the last business day of the following month. The following example is offered to ensure clarity and consistency among reporting entities in calculating the percentage. Assume the

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monthly report is submitted to the Commission on the due date of May 30, 2007. The number of complaints that were received prior to April 30, 2007, that remained unresolved, would be reported to the Commission. To calculate the stipulated percentage, divide the total number of complaints aged over 30 days, disclosed in the May 30, 2007 report, by the total number of subscribers billed during the month of April 2007 (by working billing telephone number) by each entity for which cramming complaints were received.

Inclusion of the four data points above will achieve the following: a) provide the level of unresolved cramming complaints aged over 30 days, b) allow the Commission to calculate the relative aging of those complaints (30-60 days, 60-90 days, etc.), c) identify to the Commission what entities are engaging in alleged cramming of California consumers and d) place in perspective the volume of cramming complaints that remain unresolved over 30 days in relation to the total number of subscribers billed, as required by D.06-03-013.<sup>49</sup>

It is contemplated that carriers will have 270 days from the date the Commission issues a final order putting in place this reporting requirement to establish such reporting capabilities, due to complexities the carriers described in changing databases to accommodate this type of reporting at a state level.

### ***C. Record Retention***

At the workshop, staff recommended the adoption of record retention similar to that reflected in D.00-03-020 (as modified by D 00-11-015) ), with

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<sup>49</sup> D.06-03-013, Section 9.3 Adoption of Cramming Rules, specifies that staff is to "...proposes cramming-related reporting requirements that direct carriers to provide, among other items, the number and *percentage* of cramming complaints that take more than 30 days to resolve".

regard to specifying the information to be maintained concerning cramming complaints; but broadly applied to both wireline and wireless carriers and billing agents. Specifically, D.00-03-020 states that every billing telephone company should maintain for a period of three years accurate and up-to-date records of all customer cramming complaints made to or received by it for charges for products or services provided by the billing telephone company, a third-party or its affiliates. Additionally, the Decision required every billing agent to maintain accurate and up-to-date records of all customer cramming complaints regarding charges billed through a billing telephone company made to or received by it. In the case of billing telephone companies, the records retained should include information on all consumer cramming complaints involving entities that bill directly or indirectly on the billing telephone company's bill. In the case of billing agents, the records retained should also include all consumer cramming complaints received for service providers that use the billing agent to bill for the service provider on the telephone corporation bill. D.00-03-020 required that retained records should include the following information:

1. The subscriber's name;
2. the subscriber telephone number and the unique subscriber identifier, if any;
3. the name of the service provider responsible for the charge complained about;
4. the name of the billing agent or billing agents, if any;
5. the amount of the alleged unauthorized charge and the date the charge was incurred and billed;
6. a description of the product or service billed;
7. the disposition of the dispute;
8. a record of the original subscriber authorization for the charge, if any;
9. the total dollars billed and total amount refunded by the billing telephone company or billing agent for each service provider; and

10. The total number of telephone numbers billed by the billing telephone company or billing agents for each service provider.

The JWC objected to these proposed requirements as being inconsistent with the direction of D. 06-03-013 and, believes that if adopted as recommended by staff would be unduly burdensome and cost prohibitive. JWC states “it is hard to extrapolate, and indeed the staff Report does not even attempt to do so, a reporting requirement pertaining to cramming complaint not resolved in 30 days into a record retention requirement, with a detailed accounting of ten different items, for each and every cramming complaint received by the carrier...Moreover, there is no recognition in the Draft Report of the resources (in terms of man hours, computer system modification, and document retention) which will be required if carriers are required compelled (sic) to comply with such a detailed data collection and record retention requirement.”<sup>50</sup>

Cox stated “The Discussion Paper proposes that Billing Agents and Billing Telephone Companies retain ‘the total dollars billed and total amount refunded by the billing telephone company or billing agent for each service provider’. (Item No. 9). This requirement is equivalent to that adopted in D.00-03-020 and D.00-11-015, and yet neither of those decisions explains the basis for collecting such data. Nor does the Discussion Paper describe the purpose for collecting this data or how the Commission has or would use this data’...’Furthermore, the Commission should delete proposed requirements No. 9 and 10 because neither requirement would result in the collection of useful data. Capturing and

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<sup>50</sup> “Comments on CPSD Discussion Paper regarding Cramming Reporting Requirements”, dated September 8, 2006, submitted by Michael B. Day, Counsel for CTIA- The Wireless Association on behalf of the Joint Wireless Carriers, P. 10

retaining the total number of dollars billed and refunded and the total number of telephone numbers billed without any time limitation would be superfluous. To be meaningful, data retained should correspond to a given time period so the Commission can calculate relevant percentages'...'Staff and Commission should require Billing Telephone Companies and Billing Agents to retain records that would serve a purpose in the future. Staff and the Commission should avoid imposing unnecessary retention requirements that provide no benefit to the Commission or the reporting entity."<sup>51</sup>

AT&T claims "it does not receive and thus could not retain 'a record of the original subscriber authorization for the charge, if any' for third parties for whom it bills or for affiliates for whom it bills, when subscribers purchase directly from AT&T California's affiliates. Accordingly, AT&T California requests that item eight be revised to clarify it does not apply to products and services billed on behalf of third parties, including affiliates, when the subscriber orders service directly from the affiliate."<sup>52</sup>

According to TURN, "At a minimum, if there is an allegation of cramming that needs to be investigated by the Commission or law enforcement, carriers should be required to have that information on hand. TURN is assuming that it

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<sup>51</sup> Comments of Cox California Telecom, LLC DBA Cox Communications on Cramming Reporting Requirements, dated September 8, 2006, p. 9

<sup>52</sup> AT&T's "Comments on proposal Cramming Reporting requirement", dated September 8, 2006, submitted by Brad Layous, Associate Director, State-Regulatory, p. 3



may be reasonable to require carriers to keep only those records of customers who have called in a cramming-related complaint.”<sup>53</sup>

While not directly addressing the issue of what specific information should be retained, DRA expressed general support for more inclusive and comprehensive reporting and record retention guidelines. DRA believes “the Commission is ill-advised to deny itself, and other public agencies, and by extension the public itself<sup>54</sup> the very important tool of comprehensive complaint tracking and reporting. DRA itself uses complaint reporting in its analysis and defense of ratepayer interests,<sup>55</sup> and a limitation of that complaint reporting to complaints older than 30 days would compromise DRA’s ability to represent ratepayers.<sup>56</sup> DRA believes that the telephone utilities have much more advanced reporting capabilities than have been disclosed to the Commission.”<sup>57</sup>

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<sup>53</sup> TURN comments titled Re: Consumer Protection Initiative on Cramming Reporting Requirements, dated September 8, 2006, as submitted by Christine Maillaux, Staff Attorney, p. 6

<sup>54</sup> [DRA’s footnote] Section 2889.9(d) gives specifically to this Commission the duty of requiring and receiving 3d (sic) party complaint reporting. As noted above, accurate and comprehensive complaint reporting benefits not on CPSP, but the Commission as a whole, and may also be very helpful to the California Attorney General, district attorneys, and other public agency attorneys charged with protecting the public. DRA itself has legitimate information needs.

<sup>55</sup> [DRA’s footnote] DRA's use for data may differ slightly from CPSP's. DRA's experience indicates that data about sales and complaints in the "early stages" may be useful to DRA in spotting trends and understanding market behavior. Systemic conduct that harms consumers may be invisible in individual complaints, and sometimes even in single company complaints, but become apparent to DRA when repeated across a number of companies.

<sup>56</sup> [DRA’s footnote] Even (indeed, especially) when it comes to small amounts which are refunded on demand, comprehensive complaint reporting is crucial. If complaint reporting was limited to those claims unresolved after 30 days, or limited by amount, the Commission would completely miss fraudulent campaigns, perhaps for inexpensive text charges of \$.50 or \$1.00, where the carrier immediately refunds the charge. But for every refund, how many customers pay the \$.50 or \$1.00 rather than waiting in a phone queue for 20 minutes? DRA's point is that

*Footnote continued on next page*

LIF stated in its comments that “as revealed by § 2889.9(e), the purpose of the cramming reporting program is so that the Commission may identify and investigate carriers or companies that have disproportionate numbers of cramming complaints, in order to enforce § 2890. The Commission will not be able to perform the investigations required in § 2889.9(e) if they are unable to identify the companies ultimately responsible for the cramming. It is fundamental that all of the contact information referenced in the “Contents of Monthly Cramming Complaints Report” on page 15 of the Discussion Paper be included in the monthly reports.”<sup>58</sup>

The Commission intends to investigate and prosecute those providers of products and services that continually engage in placing unauthorized charges on consumers’ telephone bills. In order to do so, the Commission must not only be able to identify the entity that has engaged in this illegal behavior but must also be able to identify the consumers that have been harmed by that company. When a provider of products and/or services consistently engages in cramming of California consumers, regardless of the fact that the affected consumers are astute enough to recognize that they have received a credit for the unauthorized charge, the Commission can take action against those entities who attempted to

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this is an undesirable practice by a carrier or a third-party, but a small charge and a no-questions refund policy make it an almost undetectable practice.

<sup>57</sup> “Comments of the Division of Ratepayer Advocates on Workshop Issues Re Cramming Complaints Reporting Rules”, dated September 8, 2006, submitted by Chris Witteman, Staff Counsel, pp. 13-15.

<sup>58</sup> Latino Issues Forum workshop comments titled “Comments on Cramming Reporting Requirements”, dated September 8, 2006, p.3

bill the consumer for those unauthorized charges. The Commission should protect all crammed subscribers, including those that have had their complaint resolved within 30 days. Therefore, providers of products and/or services must retain cramming complaint information and be in a position to respond to staff data requests for the complaint details necessary to effectively investigate and prosecute cramming cases. Staff believes that data points 1 through 8 below are elements of data it needs to have available in order to combat cramming. That said, Staff proposes that data points 1 through 8 below be retained, to the extent they exist.

<b>Data to be retained</b>	<b>Justification</b>
1) The subscriber's name	Identifies who was allegedly crammed. CPSD has an obligation to identify who may have been harmed by those entities engaged in cramming in presenting any investigation before the Commission.
2) The subscriber's telephone number and the unique subscriber identification, if any	Identifies what telephone number was crammed and the unique identifier, if any. Ensures that the proper consumer is identified.
3) The name of the service provider responsible for the charge complained about.	Identifies who was responsible for initiating the unauthorized charge on the consumer's telephone bill and allows the Commission to direct any remedial action to the party responsible for the unlawful act.
4) The name of the billing agent or billing agents, if any.	Identifies how the provider processed the unauthorized charge and allows the Commission to potentially identify other California consumers that registered complaints with the billing aggregator, but not with the carrier.
5) The amount of the alleged	The Commission needs to be able to quantify the

unauthorized charge and the date the charge was incurred and billed.	amount of financial harm experienced by the consumer in the event an investigation results in an award of restitution and imposition of fines. The entity that processed the complaint is the best source of this information. Additionally, the complainant may not recall the specific amount in question, or may not retain documentation pertaining to the complaint.
6) A description of the product or service billed.	Commission staff is obligated to identify, in investigation reports, the type of product or service that was being marketed by the crammer to determine the extent and nature of the violation.
7) The disposition of the dispute.	Commission staff needs to know how a discrete complaint was resolved to determine the extent of consumer harm. Additionally, in the event an investigation results in restitution, Commission staff needs to be able to offset customer refunds from the amount of restitution paid to complainants.
8) A record of the original subscriber authorization for the charge, if any. This requirement only applies to those entities that market the product or service directly to the subscriber.	Commission staff is obligated to ascertain whether charges are indeed unauthorized to demonstrate in investigation reports not only that a cram was alleged, but that, in fact, the subscriber did not authorize the charge. The only source for this documentation may be from the entity that initiated the charge.

### ***VIII. Opt-Out Provisions***

The Discussion Paper proposed an opt-out process to streamline cramming-related reporting. Parties generally supported the concept but questioned the need to report at all. Some parties considered the process arbitrary, while others stressed the need for signature and verification.

At the workshop, staff recommended that the Commission consider the following opt-out provisions:

1. On a monthly basis, a service provider may opt-out of the monthly reporting requirements by submitting a letter to the Director of CPSD stating that there are no reportable complaints for the subject month. The letter should be signed and verified in accordance with Rule 2.4 of the Commission's Rules of Practice and Procedure. The letter shall be submitted within 30 days from the month in which the service provider is seeking the exemption from the monthly reporting requirements.
2. On an annual basis, a service provider may also opt-out of the monthly reporting requirements by submitting a letter to the Director of CPSD setting forth specific reasons as to why it should be exempted from the monthly reporting requirements for the entire subject year. The letter should be signed and verified in accordance with Rule 2.4 of the Commission's Rules of Practice and Procedure. The letter shall be submitted by January 30th for the year in which the service provider is seeking the exemption from the reporting requirements.

TURN supports the idea of an opt-out if the company's business plan essentially prevents the possibility of cramming or if a carrier or company has had no reportable complaints in the past; but emphasizes that the opt-out should

require substantive explanation from carrier.<sup>59</sup> TURN proposes that the waiver must be accompanied by officer verification and an agreement to report complaints when received.<sup>60</sup>

The JWC support the monthly opt-out but note that the carrier is not “opting out” or reporting, it is merely reporting a lack of reportable complaints. They also state that the annual opt-out lacks criteria and the process becomes arbitrary. They propose that if a carrier’s reportable complaints remain below a *de minimus* level for a fixed period of time, the carrier should be permitted a year long exemption from the reporting requirement.<sup>61</sup>

Small and Mid-sized LECs support the monthly opt-out. If a service provider has zero complaints in a given reporting period it should be permitted to submit a verified letter.<sup>62</sup> They also support an annual exemption. If service provider had zero complaints the previous year it should not have to submit monthly “opt out” letter or any monthly documentation unless it receives a reportable complaint.<sup>63</sup>

Comcast supports Small and Mid-sized LECs proposal to permit service providers with few or no cramming complaints to report on an exception basis.<sup>64</sup>

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<sup>59</sup> TURN, p. 14.

<sup>60</sup> *Id*, p. 15.

<sup>61</sup> Joint Wireless Carriers, p.11.

<sup>62</sup> Small and Mid-sized LECs, p.3.

<sup>63</sup> *Id*, p.3-4.

<sup>64</sup> Comcast, p. 1.

Similarly, Cox supports the opt-out and recommends that service providers have the opportunity to opt-out on a quarterly and annual basis.<sup>65</sup>

Parties generally supported the monthly and yearly opt out proposal but some disagreed on the frequency and level of complaints that would allow them to opt-out. Staff agrees with TURN that if a carrier or company has had no reportable complaints in the past they should be able to opt-out with company officer verification. Staff disagrees with the JWC and Comcast that a carrier may opt-out with a few or a *de minimus* level over a period of time because determining the level of *de minimus* may become arbitrary. As a result staff proposes that only those entities that have zero reportable cramming-related complaints are to be permitted to opt-out either monthly or annually. Staff agrees in part with Cox and the Small and Mid-sized LECs that entities be permitted to opt-out on an annual basis provided they did not have any reportable cramming-related complaints during the prior year.

In conclusion, staff finds that parties are agreeable to the initial proposal and continues to recommend the following opt-out provisions:

1. On a monthly basis, a service provider may opt-out of the monthly reporting requirements by submitting a letter to the Director of CPSD stating that there are no reportable complaints for the subject month. The letter should be signed and verified in accordance with Rule 2.4 of the Commission's Rules of Practice and Procedure. The letter shall be submitted within 30 days from the month in which the

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<sup>65</sup> Cox, p. 10.

service provider is seeking the exemption from the monthly reporting requirements.

2. On an annual basis, a service provider may also opt-out of the monthly reporting requirements by submitting a letter to the Director of CPSD setting forth specific reasons as to why it should be exempted from the monthly reporting requirements for the entire subject year. The letter should be signed and verified in accordance with Rule 2.4 of the Commission's Rules of Practice and Procedure. The letter shall be submitted by January 30th for the year in which the service provider is seeking the exemption from the reporting requirements.

**(END OF APPENDIX C)**



### **INFORMATION REGARDING SERVICE**

I have provided notification of filing to the electronic mail addresses on the attached service list.

Upon confirmation of this document's acceptance for filing, I will cause a Notice of Availability of the filed document to be served upon the service list to this proceeding by U.S. mail. The service list I will use to serve the Notice of Availability of the filed document is current as of today's date.

Dated February 22, 2008, at San Francisco, California.

/s/ ELIZABETH LEWIS

Elizabeth Lewis